IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

1) **C.W.P. No.13864 of 2002**

Paramjit Singh Goraya

....Petitioner in person.

Versus

The Bar Council of India & others

... Respondent no.1 through Mr. M.L.Sarin, Senior Advocate with Mr.D.B. Singh, Advocate

Respondent no.2 through Mr.C.M.Munjal, Advocate

Respondent nos.3 and 4 through Mr.Salil Sagar, Advocate

2) **C.W.P. No.16909 of 2002**

M.C.Berry and others

....Petitioners through Mr. Salil Sagar, Advocate

Versus

The Bar Council of India & another

... Respondent no.1 through Mr. M.L.Sarin, Senior Advocate with Mr.D.B. Singh, Advocate

Respondent no.2 through Mr.C.M.Munjal,Advocate

3) **C.W.P. No.15689 of 2002**

Sukhraj Singh Brar

....Petitioner through none.

Versus

Bar Council of India & others

... Respondent no.1 through Mr. M.L.Sarin, Senior Advocate with Mr.D.B. Singh, Advocate

Respondent no.2 through Mr.C.M.Munjal, Advocate

Respondent no.3 through Mr. Randhir Singh,Addl.Advocate General, Haryana

Respondent no.4 through Mr.A.G.Mashi, Sr.Deputy Advocate General, Punjab

4) **C.W.P. No.20528 of 2002**

Gurbachan Singh Bhatia

....Petitioner through Mr. Dinesh Kumar, Advocate

Versus

Bar Council of India & others

... Respondent no.1 through Mr. M.L.Sarin, Senior Advocate with Mr.D.B. Singh, Advocate

Respondent nos.2 & 3 through Mr.C.M.Munjal, Advocate

Respondent nos.4 & 5 through Mr. Salil Sagar, Advocate

Respondent no.6 through Mr.A.G.Mashi, Sr.Deputy Advocate General, Punjab

Respondent no.7
through Mr. Randhir
Singh,Addl.Advocate
General, Haryana

Dated of decision : 5.11.2007

CORAM : HON'BLE MR. JUSTICE VIJENDER JAIN,
CHIEF JUSTICE
HON'BLE MR.JUSTICE MAHESH GROVER

....

1. Whether Reporters of Local Newspapers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

...

Vijender Jain, Chief Justice

By this judgment we will dispose of aforementioned four writ petitions as common questions of law and fact are involved therein.

The facts :

C.W.P.No.13864 of 2002

The petitioner has filed this writ petition under Articles 226/227 of the Constitution of India for issuance of a writ of mandamus directing respondent no.2 to hold elections to the Bar Council of Punjab and Haryana on validly prepared electoral rolls keeping in view Rule 2(f) contained in Part-III, Chapter-I of the Bar Council of India Rules (hereinafter referred to as 'the Rules'). He has further prayed that a writ of quo warranto be also issued quashing the continuation of respondent nos.3 and 4 as Chairman and Member of the Bar Council of Punjab and Haryana being full-time salaried employees of the Government of Punjab.

The grievance of the petitioner, in brief, is that the Returning Officer appointed to conduct elections to the Bar Council of Punjab and Haryana has issued notice dated 18.5.2002 (Annexure P2) under Rule 4 of

the Rules, which requires compliance of Rule 2 and clause (f) thereof debars Advocates, who are in full time service, from being on electoral rolls or contesting election, but without taking action in accordance with the said notice, the election programme has been finalized permitting ineligible persons to take part in the elections. It has been averred that respondent nos.3 and 4, who are employed as full time Deputy Advocates General with the State of Punjab, are already working as Chairman and Member of the Bar Council of Punjab and Haryana, which is against the mandate of Rule 2 (f) of the Rules.

It has also been pleaded that keeping in view the ensuing elections, a resolution has been passed by the existing Executive of the Bar Council of Punjab and Haryana making production of Identity Cards by the Advocates mandatory at the time of casting of votes, which will debar several Advocates from voting as during the past five years no steps had been taken in that regard. The appointment of the Secretary to the Bar Council has also been questioned by the petitioner by contending that under the Rules, a whole time Secretary should be appointed.

Respondent no.2, in its written statement, has denied the averments made by the petitioner and has prayed that the writ petition may be dismissed. It has been averred that in pursuance to notice dated 18.5.2002, no Advocate gave any information and after the expiry of the last date mentioned therein, a preliminary electoral roll was prepared and the same was circulated amongst all the Bar Associations. The objections received pursuant thereto were considered and final electoral rolls were prepared.

In so far as the elections of 1997 were concerned in which

respondent nos.3 and 4 were elected to the Bar Council, it has been pleaded that in 1997, unamended Rule 49 contained in Part-VI, Chapter-II of the Rules was in force, which did not debar Law Officers from contesting elections.

The locus standi of the petitioner to challenge the appointment of the Secretary to the Bar Council has also been questioned by stating that the same is its administrative matter.

In their written statement, respondent nos.3 and 4 have averred that they are basically Advocates and are not debarred from contesting elections or casting their votes therein. They have further averred that any rule seeking to debar them from taking part in the election process is ultra vires and unconstitutional.

CWP No.16909 of 2002

In this petition the petitioners have prayed for issuance of a writ of certiorari for quashing Rule 49 contained in Chapter-II, Part-VI of the Rules as being violative of Articles 14, 19(1)(g) and 21 of the Constitution of India. They have further prayed that the respondents be directed not to enforce the amended provisions of Rule 49 and not to take any action against any Government Advocate under the said rule.

The petitioners have pleaded that they are enrolled as Advocates with respondent no.2 in accordance with the provisions of the Advocates Act, 1961 (hereinafter described as 'the Act') and are presently serving as Deputy Advocates General in the State of Punjab. It has been averred that petitioner nos.1 and 2 are duly elected members of respondent no.2 and currently, petitioner no.1 is its Chairman. According to the petitioners, in pursuance to its rule-making power, respondent no.2 framed

the Rules and Rule 49 thereof prohibited an Advocate from becoming a full time salaried employee of any person or government etc., but its proviso provided that it will not be applicable qua a Law Officer of the Central or State Government or of any Public Corporation or body constituted by a statute, who is entitled to be enrolled under the rules of his State Bar Council made under Section 28(2)(d) read with Section 24(1)(e) of the Act despite his being a full time salaried employee. However, respondent no.1, in its meeting held on 22.6.2001, has resolved to delete the said proviso and amended Rule 49 and has asked all the Bar Councils in the country including respondent no.2 to implement the same. The petitioners have averred that the amended Rule 49 is per se arbitrary, unconstitutional and imposes unreasonable restrictions on them and, therefore deserves to be quashed.

Despite the opportunity having been granted to the respondents, no counter has been filed in this writ petition.

CWP No.15689 of 2002

The petitioner, who at the relevant time was working as Deputy Advocate General in the office of Advocate General, Haryana has filed this writ petition for quashing of resolutions of Bar Council of India Annexures P-1 and P-2 by which proviso to Rule 49 of the Rules was struck down.

The respondent no.1 filed the written statement controverting the averments made in the petition, whereas the claim of the petitioner has almost been supported in the counter filed by respondent no.4.

CWP No.20528 of 2002

The petitioner in this writ petition has prayed for issuing a writ in the nature of certiorari declaring the elections conducted by respondent

no.3 for the Bar Council of Punjab and Haryana null and void and also for direction to respondent no.2 to first prepare the electoral rolls in accordance with Rule 2(f) read with Rule 49 (amended) and finalise the same after inviting objections by giving due publicity in the media and thereafter hold the elections.

In the only written statement filed by respondent no.2 the averments of the petitioner have been controverted.

We have heard the learned counsel for the parties and have perused the record.

Rule 2, 4(1) and unamended & amended Rule 49 of the Rules, which have bearing on the decision of these writ petitions, are reproduced below :-

> "2. The name of an advocate appearing in the State Roll shall not be on the Electoral roll, if on information received or obtained by the State Bar Council concerned on the basis of which it is satisfied that --
>
> (a) his name has at any time been removed;
>
> (b) he has been suspended from practice, provided that his disqualification shall operate only for a period of five years from the date of the expiry of the period of suspension;
>
> (c) he is undischarged insolvent;
>
> (d) he has been found guilty of an election offence in regard to an election to the State Council by an election tribunal, provided, however, that such disqualification shall not operate beyond the election next following after such finding has been made;

(e) he is convicted by a competent court for an offence involving moral turpitude, provided that this disqualification shall cease to have effect after a period of two years has elapsed since his release;

(f) he is in full-time service or is in such part-time business or other vocation not permitted in the case of practising advocates by the rules either of the State Council concerned or the Council;

(g) he has intimated voluntary suspension of practice and has not given intimation of resumption of practice;

(g) he has not paid the subscription under rule 40, Chapter-II, Part VI of the Rules and obtained receipt from the State Bar Council;

(i) he has incurred any disqualification mentioned in the Act or the Rules made thereunder.

Explanation.- If an advocate who has incurred any disqualification as referred to in rule 2 and does not furnish details about it as required in the notice under rule 4 of these rules within the time specified shall be deemed to have committed an act of other misconduct as referred to in section 35(1) of the Act.

xx xx xx xx xx

4.(1) In preparing the Electoral Roll, unless the State Bar Council concerned is already maintaining a list of advocates who are entitled to be voters in terms of rule 2 of these rules, at least 150 days before the date of election, shall publish notice

issued by the Secretary of the State Bar Council concerned in prescribed form in the Official Gazette and in two or more local newspapers, one English and the other in a local language, as may be decided by the State Bar Council, asking each of the advocates on the Roll of the concerned State Bar Council to intimate the State Bar Council within the time to be specified in the said notice or within such extended time as may be given/allowed by the State Bar Council for reasons to be recorded, as to whether he has incurred any disqualification mentioned in rule 2 of these rules and quote rule 2 of these rules in said notice.

xx xx xx xx

(Unamended Rule 49)

49. An advocate shall not be a full-time salaried employee of any person, government, firm, corporation or concern, so long as he continues to practise, and shall, on taking up any employment, intimate the fact to the Bar Council on whose roll his name appears, and shall thereupon cease to practise as an advocate so long as he continues in such employment.

Nothing in this rule shall apply to a Law Officer of the Central Government or a State or of any Public corporation or body constituted by statute who is entitled to be enrolled under the rules of his State Bar Council made under section 28(2)(d) read with section 24(1)(e) of the Act despite his being a full-time salaried employee.

Law Officer for the purpose of this rule means a person who is

so designated by the terms appointment and who, by the said terms, is required to act and/or plead in courts on behalf of his employer.

xx xx xx xx

(Amended Rule 49 w.e.f. 22.6.2001)

49. An advocate shall not be a full-time salaried employee of any person, government, firm, corporation or concern, so long as he continues to practise, and shall, on taking up any employment, intimate the fact to the Bar Council on whose roll his name appears, and shall thereupon cease to practise as an advocate so long as he continues in such employment."

In the backdrop of the aforesaid pleadings and the provisions of law, the question i.e. to be determined is as to whether an advocate registered as such with a Bar Council would be debarred from contesting elections to the Bar Council of Punjab and Haryana on being considered a whole time salaried employee of the Government when employed as District Attorneys or in the Prosecution Wing of the Government.

The necessary interpretation has to be made on a conjoint reading of Section 2(f) and Section 49. But before we deal with this proposition, we propose to deal with the grievance of the petitioner in C.W.P.No.13864 of 2002, as it was confined only to a prayer that the electoral rolls be not published without compliance of Section 2 of the Act in totality.

During the course or proceedings and with a gentle nudge from the Court the respondents in the said petition have furnished a list of all those persons who are whole time Government employees engaged in the

office of the Department of Prosecution, working as Assistant District Attorneys and District Attorneys or on other such like designations which was placed on record as Annexure R-D. A statement was made by the learned counsel appearing for the respondents that they have already issued public notices as a measure of compliance of Rule 4 to weed out even those elements who have abandoned practice and are in the service/employment of Corporations, Banks and other such like institutions. An assurance was also handed out to the Court that affidavits would be procured in a given format in which the prospective voters would be required to submit their status as an advocate and to state that they are not in regular employment of any Corporation, Bank or other institution so as to invite any disqualification under the Advocate Act.

Learned counsel for the writ petitioner in C.W.P.No.13864 of 2002 readily accepted the assurance as offered by the learned counsel for the respondents. We are also immensely satisfied with the stand taken by the respondents and since the petitioner has also widely expressed his satisfaction at the aforesaid assurance and with regard to the steps initiated to weed out persons who are not practicing advocates, we dispose of the writ petition and discharge the rule issued by us.

Before parting, however, we would like to emphasise that since an assurance has been given by the counsel for the respondents to weed out persons who are full time employees and hence ineligible to vote in the elections from the electoral rolls of the Bar Council of Punjab and Haryana and further assurance to comply with the Rule 2 and Rule 4, which has largely satisfied the petitioner, the irregularities, if any, noticed and found out and pointed out by any affected party shall necessarily form a ground for

challenge to and setting aside the election of a candidate who seeks undue advantage of such an unqualified voter.

Reverting back to C.W.P.No.16909 of 2002 and the controversy raised therein, it was the insistence of the learned counsel for the petitioner that a person who engages himself in the office of the Advocate General would be deemed to be a whole time employee of the Government as he draws his status from the appointment letter and salary from the Government and hence could not escape the conclusion of being a Government employee and, therefore, debarred from seeking election to the office of Bar Council. Reliance was placed on **Shankar Balaji Waje v. The State of Maharashgra,** AIR 1962 Supreme Court 517.

We do not agree with the contention that the advocates who accept assignments in the office of the Advocate General can be termed to be full time employees of the Government. They only pander to the requirements of the office of the Advocate General and the nature of assignment is not at variance from that of a practicing advocate who pleads as such for his clients. The State as one of the major litigants before the Courts, merely engages the services of such like advocates and resort to the concept of retainership as a measure of satisfaction for the services obtained. It cannot be equated with the concept of salary even though a semblance of the same exists as an impression.

The judgment relied upon by the learned counsel for the petitioner is not attracted to the facts of the case as that was a case under the Factories Act. The Apex Court while commenting upon the relationship of an employer and employee had observed as below:-

"*The concept of employment involves three ingredients*

(1) employer (2) employee and (3) the contract of employment. The employer is one who employs, i.e., one who engages the services of other persons. The employee is one who works for another for hire. The employment is the contract of service between the employer and the employee where under the employee agrees to serve the employer subject to his control and supervision. Employment brings in the contract of service between the employer and the employee."

None of these ingredients are satisfied in the present case. There is a very thin 'membranous' line which divide the concept and relationship as enjoyed by an advocate who works in the fold of an Advocate General Office and the concept of an employer and employee as expressed by the Hon'ble Supreme Court in its observations. An advocate who engages in the office of Advocate General is not under the administrative control of the Government. He continues to be an officer of the Court, forming the bridge between the Government and the Court and pleads the case of the Government much in the same way as an advocate pleads for his client. Loss of faith in a counsel can compel a litigant to change his counsel and likewise the Government too can replace a counsel working in the Advocate General Office without affecting his status of an advocate, but by no stretch of imagination can it be termed to be a disciplinary or administrative control of the Government. Strictly speaking there is no contract for hiring the services of an advocate as in the case of an employee in the absence of any specific contract of service which envisages working of an advocate under the control and supervision of the

Government. As observed earlier in the case of an advocate engaged in the office of the Advocate General, the Government does not exercise any control or supervision over the incumbent so engaged but merely interacts with him on the same terms as a litigant does with his counsel.

The purpose behind debarring a person under the Advocate's Act, who is in full time profession other than that of an advocate is that the vocation of an advocate requires full time attention and does not permit persons who are wearing two hats as also to maintain high ethical standards.

Hence, even though we do not feel that the challenge to the amendment of Section 49 of the Act cannot be sustained as being ultra vires of the provisions of Articles 14, 19(1)(g) and 21 of the Constitution of India, but the effect of the same certainly needs to be watered down to mean that a Law Officer engaged for the services of the office of Advocate General cannot be excluded from the purview of the definition of advocate and cannot be included in the category of Government Advocates employed on full time salary so as to fall within the purview of Section 2(f) so as to incur a disqualification to either contest or hold the office of the Bar Council.

For the aforesaid reasons, we are not in agreement with the contentions of the learned counsel for the petitioner, who has contended that the names of the Advocate Generals be also deleted from the electoral rolls as he is to be compared to be at par with those advocates who were in employment of the Corporations, Banks, etc. as both of them are drawing salary in lieu of services rendered by them.

With the aforesaid observations, the writ petitions are disposed of.

(VIJENDER JAIN)
CHIEF JUSTICE

05.11.2007

(MAHESH GROVER)
JUDGE

d**ss**